

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. Kuldip Singh, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 7496/Del/2019 : Asstt. Year : 2015-16

Urban Improvement Co. (P) Ltd., C/o Raj Kumar & Associates, CA, L-7A(LGF), South Extn., Part-II, New Delhi-110049	Vs	Income Tax Officer, Ward-27(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACU1004F		

**Assessee by : Sh. Raj Kumar Gupta, CA
Revenue by : Sh. Saras Kumar, Sr. DR**

Date of Hearing: 20.01.2020

Date of Pronouncement: 07.02.2020

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT (A)-9, New Delhi dated 29.08.2019.

2. Following the grounds have been raised by the assessee:

"1. That under the facts and circumstances, the examination of issue w.r.t Sec. 43CA and consequential addition of Rs.9,08,59,835/- is beyond the scope of impugned asstt proceedings, which was selected for limited scrutiny only for examining a different issue, more so in the absence of getting the scope of limited scrutiny being extended by A.O, by following and complying with the mandatory requirements of CBDT instruction Nos. No.20/2015 Dtd. 29.12.15 and No.05/2016 Dtd. 14.07.16, thereby making the impugned asstt. and addition illegal, without jurisdiction and unsustainable in law.

2. That under the facts and circumstances both the lower authorities erred in law as well as on merits in making and

sustaining addition of Rs.9,08,59,835/- u/s.43CA of the I.T. Act.

2.1 That the provisions of Sec.43CA are not at all applicable to the facts and circumstances of the case, more so and including for the reason that in all 13 cases, the agreement to sell was entered much prior to the date of coming into existence and operation of provisions of Sec.43CA.

2.2 That without prejudice, under the facts and circumstances, Ld. A.O. grossly erred in law as well as on merits in making an addition of Rs.9,08,59,835/- by adopting the stamp duty circle rate as the deemed sale value without making the reference to the DVO as required vide Sec.43CA(2) r/w Sec,5GC(2)/(3) of the I.T. Act.

2.3 That the findings of Ld. A.O. as well as Ld. CIT(A) are based on a lot wrongly taken facts and wrongly taken inferences, hence the findings and the consequential addition is not sustainable.

2.4 That without prejudice, even on merits, no addition u/s.43CA should have been made and sustained."

3. Brief facts of the case taken from the assessment order are that the assessee was filed return of income declaring Nil income after setting of current business income of Rs.62,46,848/- against b/f unabsorbed business loss was filed by the assessee company on 21.09.2015 vide e-acknowledgment no. 808498121210915. Tax was paid u/s 115JB of the Income Tax Act, 1961 on book profit of Rs.36,88,547/-. The case was selected for limited scrutiny under CASS. Initial notice u/s 143(2) of the Act was issued on 27.06.2016 by the DCIT, Circle-27(1) and thereafter the assessment folder was transferred to this office on 15.09.2016. Fresh notice u/s 143(2) was issued on 15.09.2016 and was duly served on the assessee company. Subsequently, notice u/s 142(1) of the Act communicating the reason for selecting of the case under limited scrutiny was issued.

4. The reasons for selection of the case for limited scrutiny under CASS were **“Real Estate business with high closing stock (verify whether assessee has adopted percentage completion method)”**

5. Before the Assessing Officer, the assessee has submitted that the company is not involved in construction activity but deals only in sale of plots to various allottees from the year 1976 onwards. It was submitted that since the company is not into construction activity the percentage completion method which is relevant for construction activity is not applicable to the case of the assessee.

6. Subsequently, the Assessing Officer further examined the issue of sale of plots and found that out of the 95 sale deeds executed by the assessee, 13 sale deeds were not been executed as per the circle rate under consideration for the year and made addition of the amount on the difference between the sale consideration received by the assessee and the value for stamp duty purpose.

7. The assessee has taken objection for not following the CBDT guidelines of not taking appropriate approvals for converting 'limited scrutiny case' into 'complete scrutiny case'.

8. The Id. CIT (A) ruled out the objection of the assessee holding that the instructions as referred by the assessee regarding the scope of limited scrutiny for examining the issue other than as mentioned in the reasons of limited scrutiny are purely administrative instructions and directions and the assessee cannot make a reference thereof and cannot take support from the same to plead that in the absence of complying with these instructions and directions no other issue can be examined in limited scrutiny assessments. The Id. CIT (A) further held that since additions

made are borne out of the transactions in the Real Estate, the same is integral part of inventories in the trade of the assessee.

9. Aggrieved the assessee filed appeal before us. Heard the arguments of both the parties and perused the material available on record.

10. We find that the instructions of CBDT are very clear for examination of issue other than the reasons taken up in limited scrutiny case. The instructions of the CBDT are as under:

INSTRUCTION NO.20/2015

*Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes*

North Block, New Delhi, the 29th of December, 2015

Subject: Scrutiny Assessments-some important issues and scope of scrutiny in cases selected through Computer Aided Scrutiny Selection ('CASS')-reg .-

The Central Board of Direct Taxes ('CBDT'), vide Instruction No. 7/2014 dated 26-9-2014 had clarified the extent of enquiry in certain category of cases specified therein, which are selected for scrutiny through CASS. Further clarifications have been sought regarding the scope and applicability of the aforesaid Instruction to cases being scrutinized.

2. In order to facilitate the conduct of scrutiny assessments and to bring further clarity on some of the issues emerging from the aforesaid Instruction, following clarifications are being made:

i. Year of applicability: As stated in the Instruction No. 7/2014, the said Instruction is applicable only in respect of the cases selected for scrutiny through CASS-2014.

ii. Whether the said Instruction is applicable to all cases selected under CASS: The said Instruction is applicable where the case is selected for scrutiny under CASS only on the parameter(s) of AIR/CIB/26AS data. If a case has been selected under CASS for any other reason(s)/parameter(s) besides the AIR/CIB/26AS data, then the said Instruction would not apply.

iii. Scope of Enquiry: Specific issue based enquiry is to be conducted only in those scrutiny cases which have been selected on the parameter(s) of AIR/CIB/26AS data. In such cases, the Assessing Officer, shall also confine

the Questionnaire only to the specific issues pertaining to AIR/CIB/26AS data. Wider scrutiny in these cases can only be conducted as per the guidelines and procedures stated in Instruction No. 7/2014.

iv. Reason for selection: In cases under scrutiny for verification of AIR/CIB/26AS data, the Assessing Officer has to intimate the reason for selection of case for scrutiny to the assessee concerned.

3. As far as the returns selected for scrutiny through CASS-2015 are concerned, two type of cases have been selected for scrutiny in the current Financial Year- one is 'Limited Scrutiny' and other is 'Complete Scrutiny'. The assessee concerned have duly been intimated about their cases falling either in 'Limited Scrutiny' or 'Complete Scrutiny' through notices issued under section 143(2) of the Income-tax Act, 1961 ('Act'). The procedure for handling 'Limited Scrutiny' cases shall be as under:

a. In 'Limited Scrutiny' cases, the reasons/issues shall be forthwith communicated to the assessee concerned.

b. The Questionnaire under section 142(1) of the Act in 'Limited Scrutiny' cases shall remain confined only to the specific reasons/issues for which case has been picked up for scrutiny. Further, the scope of enquiry shall be restricted to the 'Limited Scrutiny' issues.

c. These cases shall be completed expeditiously in a limited number of hearings.

d. During the course of assessment proceedings in 'limited Scrutiny' cases, if it comes to the notice of the Assessing Officer that there is potential escapement of income exceeding Rs. five lakhs (for metro charges, the monetary limit shall be Rs. ten lakhs) requiring substantial verification on any other issue(s), then, the case may be taken up for 'Complete Scrutiny' with the approval of the Pr. CIT/CIT concerned. However, such an approval shall be accorded by the Pr. CIT/CIT in writing after being satisfied about merits of the issue(s) necessitating 'Complete Scrutiny' in that particular case. Such cases shall be monitored by the Range Head concerned. The procedure indicated at points (a), (b) and (c) above shall no longer remain binding in such cases. (For the present purpose, 'Metro charges' would mean Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Hyderabad and Ahmadabad).

4. The Board further desires that in all cases under scrutiny, where the Assessing Officer proposes to make additions or disallowances, the assessee would be given a fair opportunity to explain his position on the proposed additions/disallowances in accordance with the principle of natural justice. In this regard, the Assessing Officer shall issue an appropriate show-cause notice duly indicating the reasons for the proposed additions/disallowances along with necessary evidences/reasons forming the basis of the same. Before passing the final order against the proposed additions/disallowances, due

consideration shall be given to the submissions made by the assessee in response to the show-cause notice.

5. The contents of this Instruction should be immediately brought to the notice of all concerned for strict compliance.

*(Ankita Pandey)
Under Secretary to Government of India*

11. Further, Instruction No. 5 of 2016 dated 14.07.2016 reads as under:

Instruction No. 5/2016

*Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes*

North Block, New Delhi, the 14th of July, 2016

Subject: Direction regarding scope of enquiry in cases under 'Limited Scrutiny' selected through CASS 2015 & 2016-regd.-

Vide Instruction No. 20/2015 dated 29.12.2015 in File of even number, Board has laid down Standard Operating Procedure for handling of cases under 'Limited Scrutiny' which were selected through Computer Aided Scrutiny Selection in 'CASS Cycle 2015'. In these cases, it was stated that the general scope of enquiry in scrutiny proceedings should be restricted to the relevant parameters which formed the basis for selecting the case for scrutiny. However, in revenue potential cases, it was further provided that 'Complete Scrutiny' could be conducted, if there was potential escapement of income above a prescribed monetary limit, subject to the approval of administrative Pr. CIT/CIT/Pr. DIT/DIT.

2. In order to ensure that maximum objectivity is maintained in converting a case falling under 'Limited Scrutiny' into a 'Complete Scrutiny' case, the matter has been further examined and in partial modification to Para 3(d) of the earlier order dated 29.12.2015, Board hereby lays down that while proposing to take up 'Complete Scrutiny' in a case which was originally earmarked for 'Limited Scrutiny', the Assessing Officer ('AO') shall be required to form a reasonable view that there is possibility of under assessment of income if the case is not examined under 'Complete Scrutiny'. In this regard, the monetary limits and requirement of administrative approval from Pr. CIT/CIT/Pr.

DIT/DIT, as prescribed in Para 3(d) of earlier Instruction dated 29.12.2015, shall continue to remain applicable.

3. Further, while forming the reasonable view, the Assessing Officer would ensure that:

- a. there exists credible material or information available on record for forming such view;*
- b. this reasonable view should not be based on mere suspicion, conjecture or unreliable source; and*
- c. there must be a direct nexus between the available material and formation of such view.*

4. It is further clarified that in cases under 'Limited Scrutiny', the scrutiny assessment proceedings would initially be confined only to issues under 'Limited Scrutiny' and questionnaires, enquiry, investigation etc. would be restricted to such issues. Only upon conversion of case to 'Complete Scrutiny' after following the procedure outlined above, the AO may examine the additional issues besides the issue(s) involved in 'Limited Scrutiny'. The AO shall also expeditiously intimate the taxpayer concerned regarding conducting 'Complete Scrutiny' in such cases.

5. It is also clarified that once a case has been converted to 'Complete Scrutiny', the AO can deal with any issue emerging from ongoing scrutiny proceedings notwithstanding the fact that the reason for such issue have not been included in the Note.

6. To ensure proper monitoring in cases which have been converted from 'Limited Scrutiny' to 'Complete Scrutiny', it is suggested, that provisions of section 144A of the Act may be invoked in suitable cases. To prevent possibility of fishing and roving enquiries in such cases, it is desirable that these cases should invariably be picked up while conducting Review or Inspection by the administrative authorities.

7. The above Instruction shall be applicable from the date of its issue and would cover the cases selected under CASS 2015 which are pending scrutiny cases as well as cases selected/being selected under the CASS 2016.

8. The contents of this Instruction may be brought to the notice of all for necessary compliance.

9. Hindi version to follow.

(Rohit Garg)
Deputy Secretary to the Government of India

12. The crux of the instructions are summarized as under:

- i. The questionnaire u/s 142(1) shall be confined only to the issue of limited scrutiny.*
- ii. Approval of PCIT/CIT concern*
- iii. PCIT/CIT concern shall grant approval in writing and after being satisfied on the merits of the case.*
- iv. Such cases shall be monitored by range head.*
- v. In limited scrutiny cases enquiry shall be restricted only on the issues of limited scrutiny.*
- vi. Only after conversion of case to complete scrutiny and after following the procedure outlined above the A.O. may examine the issues other than limited scrutiny issues.*
- v. The A.O. shall intimate the assessee regarding conducting complete scrutiny.*
- vi. The provisions of Sec. 144A should be invoked in suitable cases.*
- vii. To prevent the roving and fishing enquiries, such cases should be picked up for review and inspection by administrative authorities.*

13. Reliance is also being placed in the order of the Co-ordinate Bench of ITAT in the case of CBS International Projects Pvt. Ltd. Vs ACIT, New Delhi in ITA No. 144/Del/2019 and order of the Hon'ble Jurisdictional High Court in the case of Best Plastics Pvt. Ltd. 295 ITR 256 wherein it was held that the assessment order passed by the Assessing Officer disregarding the instructions of the CBDT are liable to be set aside and no substantial question of law arises. The said judgment relied upon the decision of Hon'ble Supreme Court in the case of Commissioner of Customs Vs Indian Oil Corporation and also the judgment of Hon'ble Supreme Court in the case of UCO Bank Vs CIT: 237 ITR 889. Hence, we hold that the Assessing Officer can widen the scope of scrutiny even if the case is selected for limited scrutiny under CASS, however, the condition precedent for such widening of the scope is that the Assessing Officer has to seek prior

approval of the authorities mentioned. Such prior approval and the permission of the PCIT is lacking in the instant case. There was no satisfaction about the merits of the issue which necessitated complete scrutiny in the instant case. Hence, the assessment framed by the assessee on the issues which are not in consonance of the instruction of CBDT are liable to be quashed. The addition u/s 43CA, since beyond the scope of the limited scrutiny is hereby ordered to be deleted.

14. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 07/02/2020.

Sd/-

(Kuldip Singh)
Judicial Member

Dated: 07/02/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR